

General Information Letter: A trust which has elected under IRC Section 645 to be treated as part of an estate is also part of the estate for Illinois income tax purposes.

September 14, 1999

Dear:

This is in response to your request in our telephone conversations of September 13, 1999, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In our conversations, you asked whether a trust that has elected, pursuant to Section 645 of the Internal Revenue Code, to be treated as part of an estate would be taxed as a trust or as an estate. In particular, you asked whether the trust could use a fiscal year rather than a calendar year as its taxable year and whether the trust would be subject to the Personal Property Tax Replacement Income Tax.

Response

Section 645(a) of the Internal Revenue Code provides:

For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

The Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) does not define the terms "trust" or "estate." However, Section 102 of the IITA provides:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Thus, a trust that has made the Section 645 election is, by definition, not a separate trust, but rather is a part of the estate with respect to which the election applies for purposes of the IITA.

Section 401 (a) of the IITA generally requires every taxpayer to use, for Illinois income tax purposes, the same taxable year it uses for federal income tax purposes. Thus, if making a Section 645 election permits a trust's federal taxable year to be a fiscal year, that fiscal year must also be used for Illinois income tax purposes.

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Section 201(c) and (d) of the IITA impose the Personal Property Tax Replacement Income Tax on trusts, but not on estates. Because a trust that has made a Section 645 election is not a separate entity, but rather is a part of an estate for Illinois income tax purposes, its income will not be subject to the Personal Property Tax Replacement Income Tax.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton
Deputy Chief Counsel -- Income Tax